



Worth & Company, Inc.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF THE CLERK

Mechanical Contractor
6263 Kellers Church Road, Pipersville, PA 18947
Tel: (267) 362-1100 Fax: (267) 362-1130
www.worthandcompany.com

2008 AUG 29 A 10: 54

**VIA FAX AND REGULAR MAIL
(202) 219-3923**

August 18, 2008

Jeff S. Jordan, Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6034

Dear Mr. Jordan:

As you know, I represent Worth & Company, Inc. ("Worth") with regard to the above referenced matter. Please accept this letter as Worth's formal response to Todd Myers ("Meyers") Complaint dated July 1, 2008.

In short, this Complaint should be dismissed, in its entirety, for one or more of the following reasons: (1) Meyer's Complaint is wholly deficient in that it fails to properly assert violations of the FECA making it impossible for Worth, or any other Respondent, to effectively respond; (2) there are no substantive violations of the Federal Election Campaign Act of 1971, as amended ("FECA"); and/or (3) in the alternative, any technical violations that exist are *de minimus* at best and should be dismissed via this Commission's prosecutorial discretion. See *United States v. Batchelder*, 442 U.S. 114, 123-24 (1979); *United States v. Nixon*, 418 U.S. 683, 693 (1974); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967).

If this Commission determines that Meyer's Complaint should not be dismissed in its entirety, Worth respectfully suggests that the within matter be referred to Alternative Dispute Resolution ("ADR") as permitted under the FECA.

I. Facts

The facts of this matter are simple. On March 25, 2008, Worth held a small fundraising event for Tom Manion ("Manion"), who is running for Congress out of Bucks County, Pennsylvania. Prior to this event, Worth had never organized a political fundraiser at its



29044244895

facility. In fact, it is fair to say that Worth had no experience in organizing an event like this, and is not well-versed in the intricacies of the FECA.

Prior to the event, Sara Alexander, Worth's Executive Assistant, volunteered to make the arrangements for the event, which included circulating invitations via mail and email. Ms. Alexander is a salaried exempt employee who holds a position with Worth which affords her the ability to conduct volunteer efforts such as this during business hours. Ms. Alexander organized the event during her regular work day while simultaneously handling her typical work responsibilities.

Approximately, 75 people attended the event. Most of the attendees were family and close friends of Worth employees. Worth has no idea how much money was raised on behalf of Manion, and no Worth employee was involved in collecting contributions for the Manion campaign at the event. Worth has no interest in any contributions that were made to the Manion Campaign.

Because Worth wanted to make the attendees feel as comfortable as possible while at its facility, the company provided food and drink for the event. The cost of the food and drink, collectively, came to \$4424.17. Worth's purchase of food and drink was not done in an effort to circumvent the FECA, nor to curry favor with Manion, as speciously alleged by Meyers.

Following the event, Worth invoiced the Manion Campaign in the amount of \$5,612.97 on June 30, 2008. The invoice was sent to the Manion Campaign approximately 95 days after the event. The invoice included: \$1038.80 for the cost of invitations; \$4424.17 for food and drink; and \$150 for miscellaneous expenses, which included an estimate for postage related to the invitations. (A true and correct copy of Worth's Invoice is attached hereto as Exhibit "A"). The aforementioned expenses are not the type that Worth is typically in the habit of invoicing for as Worth is a mechanical contractor based in Pipersville, Pennsylvania. In other words, Worth is a construction company that does not have occasion to engage in hosting events such as this.

II. Argument

1. Meyers Complaint Should Be Dismissed As It Fails To Properly Assert Violations Of The FECA.

Meyer's Complaint makes wild, unsubstantiated allegations of wrongdoing with no citations to the FECA of any kind. Meyer's failure to reference even one provision of the FECA to which Worth can respond simply makes it impossible for Worth to properly answer the Complaint. There is no doubt that the FECA is a highly technical statute containing specific provisions of law, many of which include exceptions based on temporal events, quantities, etc However, Meyer's failure to cite to even one specific provision makes it impossible for Worth to substantively respond to the Complaint, and further places on Worth a burden of guessing what provision(s) of the FECA are at issue. Placing such a burden on Worth is inequitable and runs afoul of basic due process rights.

29044244896

Furthermore, Meyer's Complaint reads as nothing more than a veiled attempt to smear the reputation of Worth and Manion in order to make public claims of alleged wrongdoing. This is seen by the fact that Meyers makes reference in his Complaint to the Philadelphia Inquirer contacting Worth on June 30, 2008 (Meyers attached to his Complaint an article written by Tom Infield of the Philadelphia Inquirer dated July 1, 2008 wherein the article references a conversation with two Worth executives on Friday, June 30). Interestingly, Meyers Complaint is dated July 1, 2008, the day after the Philadelphia Inquirer contacted Worth. In other words, Meyers filed his Complaint only after contacting the Philadelphia Inquirer, and thus, proving that Meyers has no interest in enforcing the provisions of the FECA. The fact that Meyer's was more interested in contacting the Philadelphia Inquirer than the filing his Complaint speaks volumes as to the Complaint's substance and value.

2. There Are No Substantive Violations Of The FECA.

Notwithstanding Meyer's failure to make specific reference of wrongdoing under the FECA, Worth was able to glean from the Complaint that one of Meyer's primary claims is that Ms. Alexander's involvement in organizing the event was unlawful. In fact, Meyers goes so far as to wildly claim that Ms. Alexander may have been "coerced" into organizing the event. (Complaint, p. 3). The claim that Ms. Alexander's involvement in the event was unlawful is equally as ridiculous as the claim that she was coerced to engage in fundraising activities.

As this Commission well knows, it is unlawful for a corporation to require, force or otherwise coerce an employee to engage in fundraising activities. See 11 C.F.R. § 114.2(f)(2)(iv)(it is unlawful to coerce an employee with "the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee." However, as more specifically described above, Ms. Alexander's involvement with the event was entirely voluntary. She simultaneously performed her regular work responsibilities while organizing the event. In fact, Meyer's unsubstantiated claim of coercion is not only reckless, but borders on actionable.

Meyer's also claims that Worth "bundled" contributions in a concerted effort to make secret "in-kind contributions" to Manion, and to "buy influence" with Manion. Because Meyer's provides no citation of wrongdoing under the FECA, Worth is forced to assume that his claim is that Worth accepted contributions from donors for the event, and by allegedly failing to invoice Manion, violated the FECA in some way. This claim is also baseless.

Upon information and belief, it is believed that a representative of the Manion campaign who attended the event gathered contributions. Worth's involvement was organizing the event. For Meyers to make claim of a corporate conspiracy between Worth and Manion is simply specious.

Furthermore, it should be noted that the event was held at Worth's facility because the company's Mechanical Division Manager, Steve Cantrell, Lieutenant Colonel, U.S.M.C. (ret.) served with Travis Manion, First Lieutenant, U.S.M.C., Tom Manion's son, who was killed in Iraq in 2007. Worth and Mr. Cantrell simply wanted to honor Travis and his family by allowing the Manion Campaign use of its facility consistent with FECA regulations.

Finally, Meyers claims that Worth violated the FECA by not invoicing the Manion Campaign for use of its facility. In fact, merely because Worth did not invoice the Manion Campaign for use of its facility, he claims that "[t]his means that the company must have made illegal, undisclosed corporate contributions." (Complaint, p. 3).

A campaign is required to reimburse a corporation for use of its meeting rooms if the rooms "are not customarily made available to clubs, civic or community organizations or other groups...." 11 C.F.R. §114.2(f)(2)(i)(D). Worth does permit other organizations use of its facility free of charge, and therefore, not including a fee for use of its facility is appropriate and no violation of the FECA occurred.

3. In The Alternative, If Any Technical Violations Of The FECA Exist, They Are De Minimus, At Best, And Should Be Dismissed.

To the extent that this Commission believes that there are any violations of the FECA, such violations are technical at best and should be dismissed as *de minimus*. Worth recognizes that the disclaimer on the invitation may, or may not, be consistent with FECA regulations, and that Worth's invoice for food and drink was issued after the event. However, the primary purpose of the Act, which is to ensure transparency in fundraising, is intact notwithstanding any technical violation that may have occurred.

Notwithstanding any *de minimus* violation that this Commission may find, the Commission should invoke its prosecutorial discretion to dismiss the matter. The Supreme Court's decision in Court in *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985), is illustrative on this point:

This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.... This recognition of the existence of discretion is attributable in no small part to the general unsuitability for judicial review of agency decisions to refuse enforcement.

The reasons for this general unsuitability are many. First, an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement

29049244898

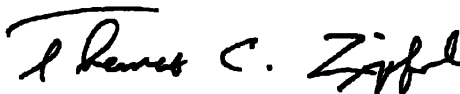
action requested best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all. *An agency generally cannot act against each technical violation of the statute it is charged with enforcing.* The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities.

(Emphasis added)(Citations omitted). The above *Heckler* analysis best describes the matter at hand. To the extent that the Commission believes that a violation of the FECA occurred, any such violation was technical and warrants an outright dismissal of the matter, or a referral to ADR.

III. Conclusion

For the reasons set forth above, Respondent Worth & Company, Inc. respectfully requests that the Complaint filed by Todd Meyers be dismissed, in its entirety. In the alternative, Worth requests that the within matter be referred to this Commission's ADR program.

Respectfully submitted,



Thomas C. Zipfel
General Counsel

TCZ/dt
Encl.